1	HEALTH REFORM - HEALTH INSURANCE
2	COVERAGE IN STATE CONTRACTS
3	2009 GENERAL SESSION
4	STATE OF UTAH
5	
6	LONG TITLE
7	General Description:
8	This bill requires certain state entities to require a contractor who contracts with the
9	state entity to offer the contractor's employees qualified health insurance coverage
10	during the duration of the contract if the contract is over a certain amount, and if the
11	contract is a construction or design contract
12	Highlighted Provisions:
13	This bill:
14	defines the following terms:
15	• "employee";
16	 "qualified health insurance coverage"; and
17	• "subcontractor";
18	requires the following state entities to require a contractor who contracts with the
19	state entity to offer qualified health insurance coverage to the contractor's eligible
20	employees and the employee's dependents if the contract amount is above a certain
21	amount:
22	• the Department of Environmental Quality;
23	 the Capitol Preservation Board;
24	• the Department of Natural Resources;
25	 the Division of Facilities Construction and Management;
26	• the Utah Department of Transportation; and
27	 public transit districts;
28	• establishes enforcement and penalties for a contractor who does not maintain an
29	offer of qualified health insurance coverage for employees during the duration of the
30	contract;
31	 deposits any penalties collected into the Medicaid Restricted Account; and

	 this bill applies to construction or design contracts entered into on or after July 1,
	2009.
M	onies Appropriated in this Bill:
	None
O	ther Special Clauses:
	None
Ut	tah Code Sections Affected:
A]	MENDS:
	17B-2a-818, as last amended by Laws of Utah 2008, Chapter 382
	26-18-402 , as last amended by Laws of Utah 1998, Chapter 360
	63A-5-205, as last amended by Laws of Utah 2008, Chapter 382
Eì	NACTS:
	17B-2a-818.5 , Utah Code Annotated 1953
	19-1-206 , Utah Code Annotated 1953
	63-34-22 , Utah Code Annotated 1953
	63C-9-403 , Utah Code Annotated 1953
	72-6-107.5 , Utah Code Annotated 1953
Ве	e it enacted by the Legislature of the state of Utah:
	Section 1. Section 17B-2a-818 is amended to read:
	17B-2a-818. Requirements applicable to public transit district contracts.
	(1) If the expenditure required to construct district facilities or works exceeds:
	(a) \$25,000, the construction shall be let as provided in Title 63G, Chapter 6, Utah
Pr	ocurement Code[-]; and
	(b) \$500,000, the construction shall be let as provided in:
	(i) Title 63G, Chapter 6, Utah Procurement Code; and
	(ii) Section 17B-2a-818.5.
	(2) (a) The board of trustees of a public transit district shall advertise each bid or
pr	oposal through public notice as the board determines.
	(b) A notice under Subsection (2)(a) may:
	(i) include publication in:

63	(A) a newspaper of general circulation in the district;
64	(B) a trade journal; or
65	(C) other method determined by the board; and
66	(ii) be made at least once, not less than ten days before the expiration of the period
67	within which bids or proposals are received.
68	(3) (a) The board of trustees may, in its discretion:
69	(i) reject any or all bids or proposals; and
70	(ii) readvertise or give notice again.
71	(b) If, after rejecting bids or proposals, the board of trustees determines and declares by
72	a two-thirds vote of all members present that in the board's opinion the supplies, equipment,
73	and materials may be purchased at a lower price in the open market, the board may purchase
74	the supplies, equipment, and materials in the open market, notwithstanding any provisions
75	requiring contracts, bids, proposals, advertisement, or notice.
76	(4) The board of trustees of a public transit district may let a contract without
77	advertising for or inviting bids if:
78	(a) the board finds, upon a two-thirds vote of all members present, that a repair,
79	alteration, or other work or the purchase of materials, supplies, equipment, or other property is
80	of urgent necessity; or
81	(b) the district's general manager certifies by affidavit that there is only one source for
82	the required supplies, equipment, materials, or construction items.
83	(5) If a public transit district retains or withholds any payment on a contract with a
84	private contractor to construct facilities under this section, the board shall retain or withhold
85	and release the payment as provided in Section 13-8-5.
86	Section 2. Section 17B-2a-818.5 is enacted to read:
87	<u>17B-2a-818.5.</u> Contracting Powers of public transit districts- health insurance
88	coverage.
89	(1) For purposes of this section:
90	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
91	34A-2-104 who works at least 30 hours per calendar week.
92	(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.
93	(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301

94	(d) "Qualified health insurance coverage" means a health benefit plan:
95	(i) that provides coverage actuarially equivalent to:
96	(A) coverage required for qualification for participation in a premium assistance plan
97	offered under Title 26, Chapter 18, Medical Assistance Act; or
98	(B) a benefit plan with the largest insured commercial enrollment offered by a health
99	maintenance organization in the state as determined by the Children's Health Insurance
100	Program under Section 26-40-106; and
101	(ii) in which the employer pays at least 50% of the premium for the employee and the
102	dependents of the employee.
103	(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.
104	(2) Except as provided in Subsection (3), this section applies to all contracts entered
105	into by the public transit district on or after July 1, 2009, if:
106	(a) the contract is for design or construction; and
107	(b) (i) the prime contract is in the amount of \$500,000 or greater; or
108	(ii) a subcontract is in the amount of \$500,000 or greater.
109	(3) This section does not apply if:
110	(a) the application of this section jeopardizes the receipt of federal funds;
111	(b) the contract is a sole source contract; or
112	(c) the contract is an emergency procurement.
113	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
114	or a modification to a contract, when the contract does not meet the initial threshold required
115	by Subsection (2).
116	(b) A person who intentionally uses change orders or contract modifications to
117	circumvent the requirements of Subsection (2) is guilty of an infraction.
118	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
119	district that the contractor has and will maintain an offer of qualified health insurance coverage
120	for the contractor's employees and the employee's dependents during the duration of the
121	<u>contract.</u>
122	(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
123	shall demonstrate to the public transit district that the subcontractor has and will maintain an
124	offer of qualified health insurance coverage for the subcontractor's employees and the

125	employee's dependents during the duration of the contract.
126	(c) A contractor or subcontractor who fails to meet the requirements of this section
127	during the duration of the contract is subject to penalties in accordance with administrative
128	rules adopted by the public transit district under Subsection (6).
129	(6) The public transit district shall adopt administrative rules in accordance with Title
130	63G, Chapter 3, Utah Administrative Rulemaking Act, which establish:
131	(a) the requirements and procedures a contractor must follow to demonstrate to the
132	public transit district compliance with this section; and
133	(b) the penalties that may be imposed if a contractor or subcontractor intentionally
134	violates the provisions of this section, which may include:
135	(i) a three month suspension of the contractor or subcontractor from entering into
136	future contracts with the public transit district upon the first violation;
137	(ii) a six month suspension of the contractor or subcontractor from entering into future
138	contracts with the public transit district upon the second violation;
139	(iii) an action for debarment of the contractor or subcontractor in accordance with
140	Section 63G-6-804 upon the third or subsequent violation; and
141	(iv) monetary penalties which may not exceed 50% of the amount necessary to
142	purchase qualified health insurance coverage for employees and dependents of employees of
143	the contractor or subcontractor who were not offered qualified health insurance coverage
144	during the duration of the contract.
145	(c) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or
146	subcontractor who violates the provisions of this section shall be liable to the employee for
147	health care costs not covered by insurance.
148	(ii) An employee has a private right of action against an employer to enforce the
149	provisions of Subsection (6)(c).
150	(7) Any penalties imposed and collected under this section shall be deposited into the
151	Medicaid Restricted Account created in Section 26-18-402.
152	(8) The failure of a contractor or subcontractor to provide health insurance as required
153	by this section:
154	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
155	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,

156	Legal and Contractual Remedies; and
157	(b) may not be used by the procurement entity or a prospective bidder, offeror or
158	contractor as a basis for any action or suit that would suspend, disrupt or terminate the design
159	or construction.
160	Section 3. Section 19-1-206 is enacted to read:
161	19-1-206. Contracting powers of department Health insurance coverage.
162	(1) For purposes of this section:
163	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
164	34A-2-104 who works at least 30 hours per calendar week.
165	(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.
166	(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
167	(d) "Qualified health insurance coverage" means a health benefit plan:
168	(i) that provides coverage actuarially equivalent to:
169	(A) coverage required for qualification for participation in a premium assistance plan
170	offered under Title 26, Chapter 18, Medical Assistance Act; or
171	(B) a benefit plan with the largest insured commercial enrollment offered by a health
172	maintenance organization in the state as determined by the Children's Health Insurance
173	Program under Section 26-40-106; and
174	(ii) in which the employer pays at least 50% of the premium for the employee and the
175	dependents of the employee.
176	(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.
177	(2) Except as provided in Subsection (3), this section applies to all contracts entered
178	into by or delegated to the department or a division or board of the department on or after July
179	1, 2009, if:
180	(a) the contract is for design or construction; and
181	(b) (i) the prime contract is in the amount of \$500,000 or greater; or
182	(ii) a subcontract is in the amount of \$500,000 or greater.
183	(3) This section does not apply to contracts entered into by the department or a division
184	or board of the department if:
185	(a) the application of this section jeopardizes the receipt of federal funds;
186	(b) the contract or agreement is between:

187	(i) the department or a division or board of the department; and
188	(ii) (A) another agency of the state;
189	(B) the federal government;
190	(C) another state;
191	(D) an interstate agency;
192	(E) a political subdivision of this state; or
193	(F) a political subdivision of another state;
194	(c) the executive director determines that applying the requirements of this section to a
195	particular contract interferes with the effective response to an immediate health and safety
196	threat from the environment; or
197	(d) the contract is:
198	(i) a sole source contract; or
199	(ii) an emergency procurement.
200	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
201	or a modification to a contract, when the contract does not meet the initial threshold required
202	by Subsection (2).
203	(b) A person who intentionally uses change orders or contract modifications to
204	circumvent the requirements of Subsection (2) is guilty of an infraction.
205	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
206	director that the contractor has and will maintain an offer of qualified health insurance
207	coverage for the contractor's employees and the employee's dependents during the duration of
208	the contract.
209	(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
210	demonstrate to the executive director that the subcontractor has and will maintain an offer of
211	qualified health insurance coverage for the subcontractor's employees and the employee's
212	dependents during the duration of the contract.
213	(c) A contractor or subcontractor who fails to comply with this section during the
214	duration of the contract is subject to penalties in accordance with administrative rules adopted
215	by the department under Subsection (6).
216	(6) The department shall adopt administrative rules in accordance with Title 63G,
217	Chapter 3, Utah Administrative Rulemaking Act, which establish:

218	(a) the requirements and procedures a contractor must follow to demonstrate to the
219	executive director compliance with this section; and
220	(b) the penalties that may be imposed if a contractor or subcontractor intentionally
221	violates the provisions of this section, which may include:
222	(i) a three month suspension of the contractor or subcontractor from entering into
223	future contracts with the state upon the first violation;
224	(ii) a six month suspension of the contractor or subcontractor from entering into future
225	contracts with the state upon the second violation;
226	(iii) an action for debarment of the contractor or subcontractor in accordance with
227	Section 63G-6-804 upon the third or subsequent violation; and
228	(iv) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
229	of the amount necessary to purchase qualified health insurance coverage for an employee and
230	the dependents of an employee of the contractor or subcontractor who was not offered qualified
231	health insurance coverage during the duration of the contract.
232	(c) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or
233	subcontractor who violates the provisions of this section shall be liable to the employee for
234	health care costs not covered by insurance.
235	(ii) An employee has a private right of action against an employer to enforce the
236	provisions of Subsection (6)(c).
237	(7) Any penalties imposed and collected under this section shall be deposited into the
238	Medicaid Restricted Account created in Section 26-18-402.
239	(8) The failure of a contractor or subcontractor to provide health insurance as required
240	by this section:
241	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
242	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
243	Legal and Contractual Remedies; and
244	(b) may not be used by the procurement entity or a prospective bidder, offeror or
245	contractor as a basis for any action or suit that would suspend, disrupt or terminate the design
246	or construction.
247	Section 4. Section 26-18-402 is amended to read:
248	26-18-402 Medicaid Restricted Account

249	(1) There is created a restricted account in the General Fund known as the Medicaid
250	Restricted Account.
251	(2) (a) [Any] The following shall be deposited into the Medicaid Restricted Account:
252	(i) any general funds appropriated to the department for the state plan for medical
253	assistance or for the Division of Health Care Financing that are not expended by the
254	department in the fiscal year for which the general funds were appropriated and which are not
255	otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account[7]; and
256	(ii) any penalties imposed and collected under:
257	(A) Section 17B-2a-818.5;
258	(B) Section 19-1-206;
259	(C) Section 63-34-22;
260	(D) Section 63A-5-205;
261	(E) Section 63C-9-403; or
262	(F) Section 72-6-107.5.
263	(b) The account shall earn interest and all interest earned shall be deposited into the
264	account.
265	(c) The Legislature may appropriate monies in the restricted account to fund programs
266	that expand medical assistance coverage and private health insurance plans to low income
267	persons who have not traditionally been served by Medicaid, including the Utah Children's
268	Health Insurance Program created in Chapter 40.
269	Section 5. Section 63-34-22 is enacted to read:
270	63-34-22. Contracting powers of department Health insurance coverage.
271	(1) For purposes of this section:
272	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
273	34A-2-104 who works at least 30 hours per calendar week.
274	(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.
275	(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
276	(d) "Qualified health insurance coverage" means a health benefit plan:
277	(i) that provides coverage actuarially equivalent to:
278	(A) coverage required for qualification for participation in a premium assistance plan
279	offered under Title 26, Chapter 18, Medical Assistance Act; or

280	(B) a benefit plan with the largest insured commercial enrollment offered by a health
281	maintenance organization in the state as determined by the Children's Health Insurance
282	Program under Section 26-40-106; and
283	(ii) in which the employer pays at least 50% of the premium for the employee and the
284	dependents of the employee.
285	(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.
286	(2) Except as provided in Subsection (3), this section applies to all contracts entered
287	into by, or delegated to the department or a division, board, or council of the department on or
288	after July 1, 2009 if:
289	(a) the contract is for design or construction; and
290	(b) (i) the prime contract is in the amount of \$500,000 or greater; or
291	(ii) a subcontract is in the amount of \$500,000 or greater.
292	(3) This section does not apply to contracts entered into by the department or a
293	division, board or council of the department if:
294	(a) the application of this section jeopardizes the receipt of federal funds;
295	(b) the contract or agreement is between:
296	(i) the department or a division, board or council of the department; and
297	(ii) (A) another agency of the state;
298	(B) the federal government;
299	(C) another state;
300	(D) an interstate agency;
301	(E) a political subdivision of this state; or
302	(F) a political subdivision of another state; or
303	(c) the contract or agreement is:
304	(i) for the purpose of disbursing grants or loans authorized by statute;
305	(ii) a sole source contract; or
306	(iii) an emergency procurement.
307	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
308	or a modification to a contract, when the contract does not meet the initial threshold required
309	by Subsection (2).
310	(b) A person who intentionally uses change orders or contract modifications to

311	circumvent the requirements of Subsection (2) is guilty of an infraction.
312	(5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
313	that the contractor has and will maintain an offer of qualified health insurance coverage for the
314	contractor's employees and the employee's dependents during the duration of the contract.
315	(b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
316	shall demonstrate to the department that the subcontractor has and will maintain an offer of
317	qualified health insurance coverage for the subcontractor's employees and the employee's
318	dependents during the duration of the contract.
319	(c) A contractor or subcontractor who fails to meet the requirements of this section
320	during the duration of the contract is subject to penalties in accordance with administrative
321	rules adopted by the department under Subsection (6).
322	(6) The department shall adopt administrative rules in accordance with Title 63G,
323	Chapter 3, Utah Administrative Rulemaking Act, which establish:
324	(a) the requirements and procedures a contractor must follow to demonstrate
325	compliance with this section to the department; and
326	(b) the penalties that may be imposed if a contractor or subcontractor intentionally
327	violates the provisions of this section, which may include:
328	(i) a three month suspension of the contractor or subcontractor from entering into
329	future contracts with the state upon the first violation;
330	(ii) a six month suspension of the contractor or subcontractor from entering into future
331	contracts with the state upon the second violation;
332	(iii) an action for debarment of the contractor or subcontractor in accordance with
333	Section 63G-6-804 upon the third or subsequent violation; and
334	(iv) monetary penalties which may not exceed 50% of the amount necessary to
335	purchase qualified health insurance coverage for an employee and a dependent of an employee
336	of the contractor or subcontractor who was not offered qualified health insurance coverage
337	during the duration of the contract.
338	(7) (a) In addition to the penalties imposed under Subsection (6), a contractor or
339	subcontractor who violates the provisions of this section shall be liable to the employee for
340	health care costs not covered by insurance.
341	(b) An employee has a private right of action against an employer to enforce the

342	provisions of this Subsection (7).
343	(8) Any penalties imposed and collected under this section shall be deposited into the
344	Medicaid Restricted Account created in Section 26-18-402.
345	(9) The failure of a contractor or subcontractor to provide health insurance as required
346	by this section:
347	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
348	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
349	Legal and Contractual Remedies; and
350	(b) may not be used by the procurement entity or a prospective bidder, offeror or
351	contractor as a basis for any action or suit that would suspend, disrupt or terminate the design
352	or construction.
353	Section 6. Section 63A-5-205 is amended to read:
354	63A-5-205. Contracting powers of director Retainage Health insurance
355	coverage.
356	(1) As used in this section[, "capital developments" and "capital improvements" have]:
357	(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.
358	(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.
359	(c) "Employee" means an "employee," "worker," or "operative" as defined in Section
360	34A-2-104 who works at least 30 hours per calendar week.
361	(d) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.
362	(e) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
363	(f) "Qualified health insurance coverage" means a health benefit plan:
364	(i) that provides coverage actuarially equivalent to:
365	(A) coverage required for qualification for participation in a premium assistance plan
366	offered under Title 26, Chapter 18, Medical Assistance Act; or
367	(B) a benefit plan with the largest insured commercial enrollment offered by a health
368	maintenance organization in the state as determined by the Children's Health Insurance
369	Program under Section 26-40-106; and
370	(ii) in which the employer pays at least 50% of the premium for the employee and the
371	dependents of the employee.
372	(g) "Subcontractor" has the meaning provided for in Section 63A-5-208.

373	(2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may
374	(a) subject to Subsection (3), enter into contracts for any work or professional services
375	which the division or the State Building Board may do or have done; and
376	(b) as a condition of any contract for architectural or engineering services, prohibit the
377	architect or engineer from retaining a sales or agent engineer for the necessary design work.
378	(3) (a) Except as provided in Subsection (3)(b) this Subsection (3) applies to all
379	contracts entered into by the division or the State Building Board on or after July 1, 2009, if:
380	(i) the contract is for design or construction; and
381	(ii) (A) the prime contract is in the amount of \$500,000 or greater; or
382	(B) a subcontract is in the amount of \$500,000 or greater.
383	(b) This Subsection (3) does not apply:
384	(i) if the application of Subsection (3) jeopardizes the receipt of federal funds;
385	(ii) if the contract is a sole source contract;
386	(iii) if the contract is an emergency procurement; or
387	(iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,
388	when the contract does not meet the threshold required by Subsection (3)(a).
389	(c) A person who intentionally uses change orders or contract modifications to
390	circumvent the requirements of Subsection (3)(a) is guilty of an infraction.
391	(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that
392	the contractor has and will maintain an offer of qualified health insurance coverage for the
393	contractor's employees and the employee's dependents.
394	(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
395	shall demonstrate to the director that the subcontractor has and will maintain an offer of
396	qualified health insurance coverage for the subcontractor's employees and the employee's
397	dependents.
398	(e) A contractor or subcontractor who fails to meet the requirements of this Subsection
399	(3) during the duration of the contract is subject to penalties in accordance with administrative
100	rules adopted by the division under Subsection (3)(f).
101	(f) The division shall adopt administrative rules in accordance with Title 63G, Chapter
102	3, Utah Administrative Rulemaking Act, which establish:
403	(i) the requirements and procedures a contractor must follow to demonstrate to the

404	director compliance with this Subsection (3); and
405	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
406	violates the provisions of this Subsection (3), which may include:
407	(A) a three month suspension of the contractor or subcontractor from entering into
408	future contracts with the state upon the first violation;
409	(B) a six month suspension of the contractor or subcontractor from entering into future
410	contracts with the state upon the second violation;
411	(C) an action for debarment of the contractor or subcontractor in accordance with
412	Section 63G-6-804 upon the third or subsequent violation; and
413	(D) monetary penalties which may not exceed 50% of the amount necessary to
414	purchase qualified health insurance coverage for an employee and the dependents of an
415	employee of the contractor or subcontractor who was not offered qualified health insurance
416	coverage during the duration of the contract.
417	(g) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or
418	subcontractor who violates the provisions of this section shall be liable to the employee for
419	health care costs not covered by insurance.
420	(ii) An employee has a private right of action against an employer to enforce the
421	provisions of Subsection (6)(c).
422	(h) Any penalties imposed and collected under this section shall be deposited into the
423	Medicaid Restricted Account created by Section 26-18-402.
424	(i) The failure of a contractor or subcontractor to provide health insurance as required
425	by this section:
426	(i) may not be the basis for a protest or other action from a prospective bidder, offeror,
427	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
428	Legal and Contractual Remedies; and
429	(ii) may not be used by the procurement entity or a prospective bidder, offeror or
430	contractor as a basis for any action or suit that would suspend, disrupt or terminate the design
431	or construction.
432	[(3)] (4) The judgment of the director as to the responsibility and qualifications of a
433	bidder is conclusive, except in case of fraud or bad faith.
434	[(4)] (5) The division shall make all payments to the contractor for completed work in

435	accordance with the contract and pay the interest specified in the contract on any payments that
436	are late.
437	[(5)] (6) If any payment on a contract with a private contractor to do work for the
438	division or the State Building Board is retained or withheld, it shall be retained or withheld and
439	released as provided in Section 13-8-5.
440	Section 7. Section 63C-9-403 is enacted to read:
441	63C-9-403. Contracting power of executive director Health insurance coverage.
442	(1) For purposes of this section:
443	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
444	34A-2-104 who works at least 30 hours per calendar week.
445	(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.
446	(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
447	(d) "Qualified health insurance coverage" means a health benefit plan:
448	(i) that provides coverage actuarially equivalent to:
449	(A) coverage required for qualification for participation in a premium assistance plan
450	offered under Title 26, Chapter 18, Medical Assistance Act; or
451	(B) a benefit plan with the largest insured commercial enrollment offered by a health
452	maintenance organization in the state as determined by the Children's Health Insurance
453	Program under Section 26-40-106; and
454	(ii) in which the employer pays at least 50% of the premium for the employee and the
455	dependents of the employee.
456	(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.
457	(2) Except as provided in Subsection (3), this section applies to all contracts entered
458	into by the board or on behalf of the board on or after July 1, 2009, if:
459	(a) the contract is for design or construction; and
460	(b) (i) the prime contract is in the amount of \$500,000 or greater; or
461	(ii) a subcontract is in the amount of \$500,000 or greater.
462	(3) This section does not apply if:
463	(a) the application of this section jeopardizes the receipt of federal funds;
464	(b) the contract is a sole source contract; or
465	(c) the contract is an emergency procurement.

466	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
467	or a modification to a contract, when the contract does not meet the initial threshold required
468	by Subsection (2).
469	(b) A person who intentionally uses change orders or contract modifications to
470	circumvent the requirements of Subsection (2) is guilty of an infraction.
471	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
472	director that the contractor has and will maintain an offer of qualified health insurance
473	coverage for the contractor's employees and the employee's dependents during the duration of
474	the contract.
475	(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
476	shall demonstrate to the executive director that the subcontractor has and will maintain an offer
477	of qualified health insurance coverage for the subcontractor's employees and the employee's
478	dependents during the duration of the contract.
479	(c) A contractor or subcontractor who fails to meet the requirements of this section
480	during the duration of the contract is subject to penalties in accordance with administrative
481	rules adopted by the division under Subsection (6).
482	(6) The division shall adopt administrative rules in accordance with Title 63G, Chapter
483	3, Utah Administrative Rulemaking Act, which establish:
484	(a) the requirements and procedures a contractor must follow to demonstrate to the
485	executive director compliance with this section; and
486	(b) the penalties that may be imposed if a contractor or subcontractor intentionally
487	violates the provisions of this section, which may include:
488	(i) a three month suspension of the contractor or subcontractor from entering into
489	future contracts with the state upon the first violation;
490	(ii) a six month suspension of the contractor or subcontractor from entering into future
491	contracts with the state upon the second violation;
492	(iii) an action for debarment of the contractor or subcontractor in accordance with
493	Section 63G-6-804 upon the third or subsequent violation; and
494	(iv) monetary penalties which may not exceed 50% of the amount necessary to
495	purchase qualified health insurance coverage for employees and dependents of employees of
496	the contractor or subcontractor who were not offered qualified health insurance coverage

197	during the duration of the contract.
198	(c) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or
199	subcontractor who violates the provisions of this section shall be liable to the employee for
500	health care costs not covered by insurance.
501	(ii) An employee has a private right of action against an employer to enforce the
502	provisions of Subsection (6)(c).
503	(7) Any penalties imposed and collected under this section shall be deposited into the
504	Medicaid Restricted Account created in Section 26-18-402.
505	(8) The failure of a contractor or subcontractor to provide health insurance as required
506	by this section:
507	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
808	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
509	Legal and Contractual Remedies; and
510	(b) may not be used by the procurement entity or a prospective bidder, offeror or
511	contractor as a basis for any action or suit that would suspend, disrupt or terminate the design
512	or construction.
513	Section 8. Section 72-6-107.5 is enacted to read:
514	72-6-107.5. Construction of improvements of highway Contracts Health
515	insurance coverage.
516	(1) For purposes of this section:
517	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
518	34A-2-104 who works at least 30 hours per calendar week.
519	(b) "First tier subcontractor" has the meaning as provided in Section 63A-5-208.
520	(c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
521	(d) "Qualified health insurance coverage" means a health benefit plan:
522	(i) that provides coverage actuarially equivalent to:
523	(A) coverage required for qualification for participation in a premium assistance plan
524	offered under Title 26, Chapter 18, Medical Assistance Act; or
525	(B) a benefit plan with the largest insured commercial enrollment offered by a health
526	maintenance organization in the state as determined by the Children's Health Insurance
527	Program under Section 26-40-106; and

528	(ii) in which the employer pays at least 50% of the premium for the employee and the
529	dependents of the employee.
530	(e) "Subcontractor" has the meaning provided for in Section 63A-5-208.
531	(2) Except as provided in Subsection (3), this section applies to all contracts entered
532	into by the department on or after July 1, 2009 for construction or design of highways if:
533	(a) the prime contract is in the amount of \$500,000 or greater; or
534	(b) a subcontract is in the amount of \$500,000 or greater.
535	(3) This section does not apply if:
536	(a) the application of this section jeopardizes the receipt of federal funds;
537	(b) the contract is a sole source contract; or
538	(c) the contract is an emergency procurement.
539	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
540	or a modification to a contract, when the contract does not meet the initial threshold required
541	by Subsection (2).
542	(b) A person who intentionally uses change orders or contract modifications to
543	circumvent the requirements of Subsection (2) is guilty of an infraction.
544	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
545	the contractor has and will maintain an offer of qualified health insurance coverage for the
546	contractor's employees and the employee's dependents during the duration of the contract.
547	(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
548	demonstrate to the department that the subcontractor has and will maintain an offer of qualified
549	health insurance coverage for the subcontractor's employees and the employee's dependents
550	during the duration of the contract.
551	(c) A contractor or subcontractor who fails to meet the requirements of this section
552	during the duration of the contract is subject to penalties in accordance with administrative
553	rules adopted by the department under Subsection (6).
554	(6) The department shall adopt administrative rules in accordance with Title 63G,
555	Chapter 3, Utah Administrative Rulemaking Act, which establish:
556	(a) the requirements and procedures a contractor must follow to demonstrate to the
557	department compliance with this section; and
558	(b) the penalties that may be imposed if a contractor or subcontractor intentionally

559	violates the provisions of this section, which may include:
560	(i) a three month suspension of the contractor or subcontractor from entering into
561	future contracts with the state upon the first violation;
562	(ii) a six month suspension of the contractor or subcontractor from entering into future
563	contracts with the state upon the second violation;
564	(iii) an action for debarment of the contractor or subcontractor in accordance with
565	Section 63G-6-804 upon the third or subsequent violation; and
566	(iv) monetary penalties which may not exceed 50% of the amount necessary to
567	purchase qualified health insurance coverage for an employee and a dependent of the employee
568	of the contractor or subcontractor who was not offered qualified health insurance coverage
69	during the duration of the contract.
570	(c) (i) In addition to the penalties imposed under Subsection (6)(b), a contractor or
571	subcontractor who violates the provisions of this section shall be liable to the employee for
572	health care costs not covered by insurance.
573	(ii) An employee has a private right of action against an employer to enforce the
574	provisions of Subsection (6)(c).
575	(7) Any penalties imposed and collected under this section shall be deposited into the
576	Medicaid Restricted Account created in Section 26-18-402.
577	(8) The failure of a contractor or subcontractor to provide health insurance as required
578	by this section:
579	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
80	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
581	Legal and Contractual Remedies; and
582	(b) may not be used by the procurement entity or a prospective bidder, offeror or
583	contractor as a basis for any action or suit that would suspend, disrupt or terminate the design
84	or construction.